

ESTTA Tracking number: **ESTTA731446**

Filing date: **03/04/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Horizon Food Equipment, Inc.		
Entity	Corporation	Citizenship	New York
Address	12 Warren Street Schenectady, NY 12305 UNITED STATES		

Attorney information	ANDY I COREA St. Onge Steward Johnston & Reens LLC 986 Bedford Street STAMFORD, CT 06905 UNITED STATES litigation@ssjr.com Phone:2033246155
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Registration Subject to Cancellation

Registration No	4663124	Registration date	12/30/2014
Registrant	BakeRite Systems LLC 1204 Berea Road Richmond, KY 40475 UNITED STATES		

Goods/Services Subject to Cancellation

Class 007. First Use: 2014/03/20 First Use In Commerce: 2014/03/20 All goods and services in the class are cancelled, namely: Industrial baking equipment in the nature of mixing machines
Class 011. First Use: 2014/03/20 First Use In Commerce: 2014/03/20 All goods and services in the class are cancelled, namely: Industrial ovens and industrial baking equipment in the nature of stoves

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86770585	Application Date	09/28/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BAKE-RITE		

Design Mark	
Description of Mark	The mark consists of the wording bake-rite adjacent to the stylized image of a head of wheat.
Goods/Services	Class 035. First use: First Use: 1995/00/00 First Use In Commerce: 1995/00/00 Retail and wholesale distributorships featuring bakery and kitchen food services equipment and parts for bakery and kitchen food services equipment Class 037. First use: First Use: 1995/00/00 First Use In Commerce: 1995/00/00 Repair, installation, and maintenance of bakery equipment and kitchen food services equipment; rental of bakery and kitchen food services equipment, and refrigeration and HVAC equipment
Attachments	86770585#TMSN.png(bytes) Petition to Cancel.pdf(329241 bytes) Exhibits to Pet to Cancel.pdf(528647 bytes)

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Andy I. Corea/
Name	ANDY I COREA
Date	03/04/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HORIZON FOOD EQUIPMENT, INC.,	:	
	:	
Petitioner,	:	Cancellation No.
	:	[not yet assigned]
v.	:	
	:	
BAKERITE SYSTEMS LLC	:	
	:	
Registrant.	:	

U.S. TRADEMARK REG. NO. 4,663,124



REGISTERED: December 30, 2014

PETITION TO CANCEL

Horizon Food Equipment, Inc. ("Petitioner") hereby petitions to cancel U.S. Trademark



Registration No. 4,663,124 for the mark on the following grounds:

1. Petitioner is a New York corporation with an address at 12 Warren Street
Schenectady, New York.

2. Petitioner is the owner of U.S. Application No. 86770585 for the mark



for use in connection with: "Retail and wholesale distributorships featuring
bakery and kitchen food services equipment and parts for bakery and kitchen food services
equipment" [and] "Repair, installation, and maintenance of bakery equipment and kitchen food

services equipment; rental of bakery and kitchen food services equipment, and refrigeration and HVAC equipment.” Copies of Petitioner’s Application record from the USPTO online TESS database are attached as Exhibit A.

3. Petitioner, through a predecessor in interest has used the BAKE-RITE since at least as early as 1995.

4. According to the records of the USPTO, the current owner of U.S. Registration No. 4,663,124 Bakerite Systems LLC (“Registrant”), a limited liability company organized under the laws of Kentucky, with a principle address at 1204 Berea Road, Richmond, Kentucky 40475. A copy of the TESS U.S. Registration No. 4,663,124 is attached as Exhibit B and made of record.

5. According to the records of the USPTO for U.S. Registration No. 4,663,124, Registrant asserts that its first use in commerce of the BAKERITE SYSTEMS trademark was at least as early as March 20, 2014.

6. The USPTO refused Petitioner’s application to register its COUNSEL ON CALL trademark under Section 2(d) of the Lanham Act, due to the examining attorney’s conclusion that

the marks  and  are confusingly similar.

7. As a result of Petitioner’s long-standing use of the BAKE-RITE, Petitioner has priority within the meaning of Section 2(d) of the Lanham Act well in advance of Registrant’s adoption and subsequent registration of the BAKERITE SYSTEMS trademark by Registrant

8. Petitioner has priority to the BAKE-RITE trademark as a result of its prior use. The USPTO has issued an Office Action asserting that the marks are confusingly similar – which prevents Petitioner from obtaining a registration of its mark. Therefore, Petitioner is suffering and

will continue to suffer harm as a result of the ongoing registration of BAKERITE SYSTEMS in U.S. Trademark Registration No. 4,663,124.

9. Registrant's continued use and registration of the BAKERITE SYSTEMS trademark is likely to cause confusion, mistake, of deception with Petitioner's prior-used mark BAKERITE within the meaning of Section 2(d) of the Lanham Act.

10. On information and belief, Registrant did not assign, transfer or otherwise convey U.S. Registration No. 4,663,124 to any third party prior to filing of this cancellation action.

WHEREFORE, Petitioner prays that the Trademark Trial and Appeal Board grant its Petition and Cancel U.S. Trademark Registration No. 4,663,124.

Respectfully submitted,

March 4, 2016



Andy I. Corea
ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 Bedford Street
Stamford, CT 06905
Telephone: (203) 324-6155
Facsimile: (203) 327-1096
Email: acorea@ssjr.com;
litigation@ssjr.com

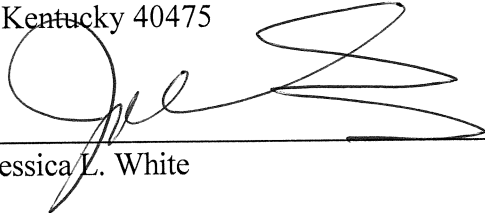
Attorneys for Petitioner

CERTIFICATE OF SERVICE

This is to certify that on this date, a true copy of the foregoing **PETITION TO CANCEL** is being served, by first class mail, postage prepaid, to the owner of record of U.S. Registration No. 4,663,124 at the address for the party identified in the USPTO TSDR database:

Bakerite Systems
1204 Berea Road
Richmond, Kentucky 40475

MARCH 4, 2014
Date:



Jessica L. White

Exhibit A



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Word Mark BAKE-RITE

Goods and Services IC 035. US 100 101 102. G & S: Retail and wholesale distributorships featuring bakery and kitchen food services equipment and parts for bakery and kitchen food services equipment. FIRST USE: 19950000. FIRST USE IN COMMERCE: 19950000

IC 037. US 100 103 106. G & S: Repair, installation, and maintenance of bakery equipment and kitchen food services equipment; rental of bakery and kitchen food services equipment, and refrigeration and HVAC equipment. FIRST USE: 19950000. FIRST USE IN COMMERCE: 19950000

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 05.07.02 - Bundles, grain; Haystacks; Stalks (grain)

Serial Number 86770585

Filing Date September 28, 2015

Current Basis 1A

Original Filing Basis 1A

Owner (APPLICANT) Horizon Food Equipment, Inc. CORPORATION NEW YORK 412 Warren Street
Schenectady NEW YORK 12305

Attorney of Record Andy I. Corea

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the wording bake-rite adjacent to the stylized image of a head of wheat.

Type of Mark SERVICE MARK

Register PRINCIPAL
LIVE

**Live/Dead
Indicator**

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Exhibit B



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Word Mark	BAKERITE SYSTEMS
Goods and Services	IC 007. US 013 019 021 023 031 034 035. G & S: Industrial baking equipment in the nature of mixing machines. FIRST USE: 20140320. FIRST USE IN COMMERCE: 20140320 IC 011. US 013 021 023 031 034. G & S: Industrial ovens and industrial baking equipment in the nature of stoves. FIRST USE: 20140320. FIRST USE IN COMMERCE: 20140320
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	09.05.06 - Chef's Hat 11.01.11 - Beaters (non -electric); Beaters, egg (non-electric); Egg beaters, non-electric; Food mixers, non-electric; Mixers, non-electric food; Whisk (non-electric) 27.03.05 - Objects forming letters or numerals
Serial Number	86280914
Filing Date	May 14, 2014
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	October 14, 2014
Registration Number	4663124
Registration Date	December 30, 2014
Owner	(REGISTRANT) BakeRite Systems LLC LIMITED LIABILITY COMPANY KENTUCKY 1204 Berea Road Richmond KENTUCKY 40475
Attorney of Record	Amy Sullivan Cahill
Disclaimer	

	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SYSTEMS" APART FROM THE MARK AS SHOWN
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of the words "BAKERITE SYSTEMS" in a stylized format with a chef's hat perched atop the "B" and the "I" in the form of a cooking whisk.
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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